

Syllabus.

IN THE MATTER OF
INTERNATIONAL SHOE COMPANY.

COMPLAINT, FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 7 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 1023—November 25, 1925.

SYLLABUS.

Where the largest manufacturer of leather shoes, engaged in the sale thereof chiefly to retail dealers in small cities and towns outside of New England, and in a strong and healthy position and oversold on its products to such an extent that it was a matter of grave concern to its management;

Acquired the stock of a New England corporation, which (a) theretofore constituted the largest manufacturer of leather dress shoes for men and boys, and had long been regarded as the most efficiently managed concern in the world, (b) sold its said product through jobbers and wholesalers and to large retailers, and to retailers generally from its branch houses, and was a substantial competitor of the aforesaid manufacturer in the sale thereof, (c) at that time had large commitments and stocks of finished shoes, and owned large sums of money at the banks, and was in a financial condition which was a matter of apprehension to its officers and directors, though it was solvent and did not fail, and (d) initiated and prosecuted the negotiations which led to said acquisition; and following said acquisition planned and carried out or caused to be carried out a series of transactions which culminated in the transfer of said company's stock elsewhere and in the transfer to it of all the assets, properties, rights and privileges of said corporation as a going concern and in the liquidation of the liabilities thereof;

With the result that it thereby gained control of the largest manufacturer of street and dress shoes for men and boys, eliminated from the field its largest competitor in the sale of men's dress shoes, acquired access to the New England territory and to customers for such shoes in the large cities, accomplished a nation wide distribution of its product, and tended to create in itself a monopoly in the shoe business, competition in commerce between it and said corporation in the sale of dress shoes for men was substantially lessened, and commerce in the shoe business, and especially in that part of such business relating to the sale of dress shoes for men, in various sections or communities of the United States in which it and said corporation were engaged in commerce, was restrained:

Held, That such acquisition of stock, under the circumstances set forth, constituted a violation of Section 7 of an Act of Congress approved October 15, 1914.

Mr. A. R. Brindley for the Commission.

Mr. R. E. Blake of St. Louis, Mo., for respondent.

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COMPLAINT.

Acting in the public interest, and having reason to believe that the International Shoe Company, hereinafter called the respondent, has violated and is violating the provisions of Section 7 of an Act of Congress approved October 15, 1914 (the Clayton Act), entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," the Federal Trade Commission issues this complaint, against said respondent, stating its charges in that respect as follows:

PARAGRAPH 1. The International Shoe Company is a corporation organized March 16, 1921, under the laws of the State of Delaware, with an authorized capital stock of 250,000 shares of preferred stock with a par value of \$100 each (or \$25,000,000) and 1,400,000 shares of common stock of no stated par value, and has its principal office and place of business in the city of St. Louis, in the State of Missouri. It succeeded, and is a reorganization of International Shoe Company, a corporation organized in 1911 under the laws of the State of Missouri, having an authorized capital stock of \$15,000,000, and the respondent succeeded to and acquired the rights and assets and assumed the liabilities of the Missouri corporation, which was thereupon dissolved. The respondent owns and operates thirty-two or more shoe factories in the States of Illinois, Missouri, and Kentucky, some of which have been acquired by absorbing competing companies. The respondent also owns and operates stores, selling departments, and branch establishments among the several States and the District of Columbia and is and has been engaged in the business of manufacturing shoes for men, women, boys, children and infants, and in selling such shoes to wholesale and retail shoe dealers and other purchasers in the various States of the United States in addition to those States in which its said shoe factories are located. It causes such shoes to be shipped and transported from the factories where made, and from stores and branch establishments, to purchasers among the several States of the United States, the territories thereof, and the District of Columbia, and is engaged in interstate commerce within the meaning of said Act of Congress approved October 15, 1914 (the Clayton Act), in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. The W. H. McElwain Company is, and at the time hereinafter mentioned was, a corporation organized under the laws of Massachusetts, with an authorized capital stock of \$14,140,000, and with its principal office in the city of Boston, in said State. It owns

and operates shoe manufacturing plants in the State of New Hampshire, where shoes for men and boys have been and are manufactured, and owns and operates stores, selling departments, and branch establishments in the cities of Boston, Mass.; New York City, N. Y.; Columbus, Ohio; Chicago, Ill.; Kansas City, Mo.; San Francisco, Calif., and in other places within the several States of the United States and the District of Columbia. It was and is engaged in the business of selling such shoes to wholesalers, retailers and others among the several States of the United States, the territories thereof, and the District of Columbia, and in shipping and transporting such shoes from the factories where made and from stores and branch establishments, to purchasers thereof in various cities and towns among the several States of the United States, the territories thereof and the District of Columbia, and is and has been engaged in interstate commerce within the meaning of said Act of Congress approved October 15, 1914 (the Clayton Act), in competition with other persons, firms and corporations similarly engaged. On and prior to May 11, 1921, the respondent and the said W. H. McElwain Company were in competition with each other in the shoe business as hereinabove described.

PAR. 3. On or about May 11, 1921, while the International Shoe Company and the W. H. McElwain Company were engaged in commerce in competition with each other as aforesaid, the International Shoe Company acquired the whole, or substantially all, of the stock or other share capital of said W. H. McElwain Company, and still owns and controls such stock or share capital so acquired. Such acquisition of such stock or share capital of the W. H. McElwain Company was contrary to law and violative of said Act of Congress approved October 15, 1914 (the Clayton Act), and especially Section 7 thereof. The effect of the acquisition by the respondent of such stock or other share capital of the W. H. McElwain Company was, to wit:

(a) To substantially lessen competition between the W. H. McElwain Company, the corporation whose stock was so acquired, and the International Shoe Company, the corporation making the acquisition;

(b) To restrain commerce in the shoe business in the several sections and communities of the United States in which the respondent and the said W. H. McElwain Company were engaged in business in interstate commerce, as aforesaid;

(c) To tend to create in the respondent a monopoly in interstate commerce in the shoe business.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes" (The Clayton Act), the Federal Trade Commission duly issued and served a complaint on International Shoe Company, a corporation, hereinafter called respondent, charging that International Shoe Company is and has been violating the provisions of said Act of Congress and especially Section 7 thereof.

Thereupon the respondent entered its appearance and filed its answer to the complaint, and formal hearings were had thereon before an examiner of the Commission theretofore duly appointed, and testimony, documentary evidence and exhibits were offered and received, and duly recorded and filed in the office of the Commission; thereafter the proceeding regularly came on for hearing before the Federal Trade Commission on such complaint and answer, and on the testimony, evidence and exhibits on file, and on the briefs and arguments of counsel, and the Federal Trade Commission duly considered the same, and now makes this report in writing and states its findings as to the facts as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, International Shoe Company, is a corporation under the laws of Delaware, with its principal office and place of business in the city of St. Louis, Mo. It was originally incorporated under the laws of Missouri and was a consolidation of two corporations engaged in the shoe business at St. Louis, Mo., viz: Roberts, Johnson & Rand, and Peters Shoe Company. It later purchased the Friedman-Shelby Company of St. Louis, and was re-incorporated in 1921 under the laws of Delaware. It owns and operates tanneries for leather in the States of Illinois, Pennsylvania, and North Carolina, and it owns and operates thirty-two or more shoe factories in the States of Missouri, Illinois, and Kentucky, with a daily capacity of more than seventy thousand pairs of shoes, and owned and operated such tanneries and factories in 1921 and prior thereto. It now operates and claims to own the leather tanneries and shoe factories in the States of New Hampshire and Massachusetts formerly owned by W. H. McElwain Company. It owns and operates seven sales houses or branches in the cities of Boston, Mass., New York, N. Y., and St. Louis, Mo., and it manufactures and sells in commerce a large general line of leather shoes for men, women, boys, girls, and infants.

PAR. 2. For many years past, and during 1921, the various types and styles of shoes manufactured by respondent were sold through its sales houses or branches throughout the United States generally, to purchasers in substantially all of the States of the United States. Such shoes were shipped and transported from the places where respectively manufactured or sold by respondent to purchasers into other States of the United States and the District of Columbia, and respondent is, and for many years has been, engaged in commerce in competition with others, within the meaning of said Act of Congress.

PAR. 3. In 1921, and prior thereto, the trade territory of the respondent was practically all of the United States. The shoes manufactured by it were sold largely to retail dealers in small cities and towns in the various States outside New England. Respondent made some sales of its shoes in New England, and also to wholesale and retail dealers in some of the larger cities throughout the United States. Prior to the acquisition by the respondent of the stock or share capital of the W. H. McElwain Company, all the sales houses or branches of the respondent were located in St. Louis, Mo.

PAR. 4. W. H. McElwain Company is a corporation under the laws of Massachusetts. Its principal office and place of business was at Boston, Mass. In 1921, and for many years prior thereto, W. H. McElwain Company owned and operated tanneries for leather at Manchester and Merrimac, N. H., and shoe factories at Manchester, Nassau, Newport, Claremont, and Keene, N. H., and was engaged in manufacturing and selling leather shoes for men, boys, and misses. Its shoe factories had a daily capacity of about forty thousand pairs of shoes. It owned, in whole or in part, branches or distributing houses in Boston, Mass.; New York, N. Y.; Columbus, Ohio; Chicago, Ill.; Kansas City, Mo.; and San Francisco, Calif., and developed a sound and successful business, and for many years it was regarded as the most efficiently managed concern in the world. It produced among other shoes, dress shoes for men and boys. Dress shoes mean shoes worn generally as distinguished from work shoes. The shoes manufactured by W. H. McElwain Company were sold by it direct from its factories to jobbers and wholesalers and to large retailers in cities among the several States and to retail dealers throughout the United States generally. It also sold its shoes direct from its branches or distributing houses to retail dealers among the several States adjacent to such branches or distributing houses. Some of its branch houses sold only the shoes manufactured by W. H. McElwain Company, while others of its branch houses, in addition to McElwain shoes, sold a general line of shoes purchased from other manufacturers. For the year ending May 31, 1921, the

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men's and boy's shoes manufactured by W. H. McElwain Company were sold to purchasers in at least thirty-five States of the United States and the District of Columbia. The larger part of its product was sold in the cities, but it also sold its shoes direct to retailers in small cities and towns in at least thirty-five States of the United States. In 1920 it made more dress welt shoes for men and boys than any other manufacturer in the world, and was the largest manufacturer of shoes in the New England States.

PAR. 5. The shoes produced by W. H. McElwain Company in 1921 and for some time prior thereto were sold to retail dealers at about \$6 to \$9 per pair. At the same time the International Shoe Company produced a line of men's dress shoes known as the "Patriot" brand, and of that brand ten styles of low shoes and twenty-two styles of high shoes were similar in style, comparable in price, and equal or superior in quality to the men's high and low dress shoes produced by W. H. McElwain Company. The "Patriot" shoes manufactured and sold by respondent were sold to retailers at about the same price per pair as the shoes manufactured and sold by W. H. McElwain Company. Both companies made and sold medium priced dress shoes and sold such shoes to retail dealers in the same States, and in many of the same cities and towns, and in some instances to the same dealers. On and prior to May 11, 1921, both companies were engaged in manufacturing and selling leather dress shoes in commerce among the several States and the District of Columbia, in competition with each other, and with others similarly engaged. The competition in commerce between the two companies was substantial.

PAR. 6. Respondent is the largest manufacturer of leather shoes in the United States. In its catalogue for the spring and summer of 1921, respondent listed and described sixty-nine types or styles of low shoes and sixty-two types or styles of high shoes for women; thirty-nine types or styles of leather low shoes and seventy-six types or styles of leather high shoes for men; thirty-two styles or types of leather low shoes, and forty-five styles or types of leather high shoes for children; thirty-two styles or types of leather high shoes for boys; thirty-seven styles or types of leather shoes for infants, and sixty-one styles or types of leather high work shoes for men. In addition, respondent's catalogue listed and described about fifty varieties of cloth or canvas shoes, and sixteen varieties of rubber soled shoes.

PAR. 7. For many years prior to May 11, 1921, extending probably as far back as 1898, W. H. McElwain Company was engaged in the manufacture of leather shoes for men and boys, and in the

sale and distribution of the same among the several States of the United States. It was among the larger manufacturers of such shoes in the United States, and it was the largest manufacturer in the United States of leather dress shoes for men and boys. It manufactured and sold a larger line of such shoes than the respondent.

PAR. 8. For the fiscal year ending May 31, 1921, the shoes manufactured by W. H. McElwain Company were sold and delivered by it direct from its factories to retail dealers in at least thirty-five States of the United States and the District of Columbia. Such shoes were sold and delivered by it to retailers in the States of New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Ohio, Indiana, Illinois, Michigan, Wisconsin, West Virginia, Kentucky, Tennessee, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, Missouri, Iowa, Oklahoma, Texas, Minnesota, Utah, Colorado, Washington, Oregon, California, District of Columbia, and also in New Foundland and the Hawaiian Islands. The sales in some of these States were small. During the same period, W. H. McElwain Company also sold and shipped its shoes to jobbers and wholesale dealers among the several States and to its branch houses or distributing agencies in the cities of Boston, New York, Columbus, Chicago, and San Francisco. During the same time respondent sold its shoes, including men's dress shoes, to about 78,242 retail dealers in the States of Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, West Virginia, Virginia, North Carolina, Georgia, Florida, Kentucky, Tennessee, Mississippi, Alabama, Ohio, Indiana, Illinois, Michigan, Wisconsin, North Dakota, South Dakota, Minnesota, Iowa, Nebraska, Kansas, Missouri, Arkansas, Oklahoma, Texas, Louisiana, Montana, Wyoming, Idaho, Utah, Arizona, Colorado, New Mexico, Nevada, Washington, Oregon, California, and the District of Columbia.

PAR. 9. In the summer and fall of the year 1920 there was a slump in prices, a cancellation of orders and reduced buying, and that situation affected the shoe business as well as other lines of commerce in the United States. W. H. McElwain Company had contracted for a year's supply of hides in India, and had other commitments and large stocks of finished shoes, and owed large sums of money at the banks. Its officers and directors became apprehensive of its financial condition. It was, however, not insolvent, and it did not fail. The respondent had been remarkably successful and was unhurt by the business depression of 1920. It was in a strong, healthy position, and was vastly oversold on its products, so much so that it

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was a matter of grave concern to its management. The situation was concretely expressed by Jackson Johnson, the chairman of the International Shoe Company board, in the following testimony:

Might I say, rather than just giving you the sum total, that this sheet indicates that the Company had for that period (i. e., January to May 1921) orders to the extent of \$37,265,000, out of which it shipped \$25,875,000, and due to this inability there were \$11,395,000 either cancelled by us or the customers. In other words, we shipped only about two-thirds of the goods we had orders for during that period just preceding the purchase of the W. H. McElwain Company.

PAR. 10. On a Saturday night in March 1921, J. F. McElwain, the president of W. H. McElwain Company, appeared in St. Louis, Mo., and through W. H. Moulton, a vice president of respondent, arranged to see and talk the next day with Jackson Johnson at his home. Jackson Johnson was chairman of the International Shoe Company board. McElwain approached Johnson on that Sunday morning with the suggestion of a consolidation of large shoe manufacturers to include at least three other large manufacturers of shoes, and inquired if Johnson would be interested in heading such an organization. Johnson declined, stating that he would not be interested. About ten days later, on April 8, 1921, McElwain returned to St. Louis accompanied by Stanley King, a vice president of W. H. McElwain Company, and again conferred with Johnson. The big combination of shoe manufacturers was then only casually mentioned, and McElwain took up the question of the International Shoe Company taking over W. H. McElwain Company. McElwain submitted to Johnson balance sheets and trial balances, and went fully into the conditions confronting W. H. McElwain Company. Johnson took no definite stand on the matter. Frank C. Rand, president of the International Shoe Company, was not in St. Louis at that time. It was agreed that when Rand returned to St. Louis, he and Johnson would go to Boston, Mass., to look over the situation. McElwain agreed to furnish additional figures in regard to W. H. McElwain Company, and Johnson agreed to furnish figures regarding the International Shoe Company and its business. The next day, April 9, 1921, Johnson wrote a letter to McElwain which appears in the record as Commission's Exhibit 23, and McElwain replied in a letter which appears in the record as Respondent's Exhibit 24.

PAR. 11. In compliance with the agreement, Johnson and Rand visited Boston, Mass., accompanied by Moulton, a vice president of the International Shoe Company who had been employed by W. H. McElwain Company for many years prior to his employment by respondent. Three days, April 25, 26 and 27, 1921, were spent by

these parties and officers of the W. H. McElwain Company in an inspection of the physical properties of W. H. McElwain Company, and in an investigation of its business and in discussing the proposed trade. Johnson and Rand declined to consider any proposition without an appraisal, inventory, and audit of W. H. McElwain Company. Nothing except general principles in relation to the trade were agreed upon, and Johnson and Rand left Boston without any definite proposition. McElwain and King accompanied Johnson and Rand to New York, and the conferences were continued that night at a hotel. Johnson stated during the conference at the hotel that he would recommend 87½ per cent for the first preferred stock, of W. H. McElwain Company, subject to proper inventory, appraisal, and evidence of assets. But Johnson said that the respondent would not be interested on any terms unless W. H. McElwain Company first took a physical inventory of its assets, and submitted an audited balance sheet. J. F. McElwain agreed to take an inventory and submit an audited balance sheet of W. H. McElwain Company.

PAR. 12. The inventory was taken, McElwain and King again went to St. Louis, and the next conference occurred on May 8, 1921, at Rand's house between McElwain and King and several officers of respondent. A balance sheet and the inventory as of April 30, 1921, were presented and discussed. After some discussion and a failure to agree, it was suggested that Rand and King withdraw from the conference and work out some solution of the problem, and they did so. King offered to sell the assets of W. H. McElwain Company to International Shoe Company, but Rand declined to buy the assets at any price. W. H. McElwain Company had three classes of stock outstanding, viz, first preferred, second preferred, and common. International Shoe Company had two classes of stock outstanding, viz, preferred and common. Rand and King worked out figures and an agreement for the three classes of stock of W. H. McElwain Company, which would express itself on the basis of the net assets of W. H. McElwain Company as shown by the inventory, and these figures were manipulated so that the prices for the three classes of stock in the aggregate amounted in round numbers to the value of the company indicated by the inventory. The terms worked out by Rand and King, with some slight modification suggested by Johnson, were agreed to and subsequently embodied in a written agreement on May 11, 1921, between representatives of the two companies and the bankers who were largely interested in the first preferred stock of W. H. McElwain Company. That contract appears in the record as respondent's Exhibit 4.

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PAR. 13. The consolidated balance sheet of W. H. McElwain Company as of April 30, 1921, appears in the record as respondent's Exhibit 1. The assets of W. H. McElwain Company on that date amounted to \$27,100,437 and the debts consisting of notes and accounts amounted to \$17,177,349.25, leaving a net worth of \$9,923,087.75.

PAR. 14. The contract of May 11 provided that all the three classes of stock of W. H. McElwain Company should be acquired by the respondent by an exchange of its stock on the terms therein named. McElwain and King agreed to sell all the outstanding stock of W. H. McElwain Company, although their ownership of stock was of second preferred and common. As a basis for exchange International Shoe Company preferred stock \$100 par was valued at \$109, and International Shoe Company common stock of no par was valued at \$30. W. H. McElwain Company first preferred stock \$100 par was valued at \$82.50; second preferred \$50 par was valued at \$37.50, and the common stock \$50 par at \$25. The stockholders of W. H. McElwain Company were given the option of taking International Shoe Company stock or cash. For the three classes of W. H. McElwain stock the respondent gave in stock and cash the sum of \$9,464,837.50.

PAR. 15. On May 12, 1921, the directors of the International Shoe Company unanimously adopted a preamble and resolution which recites that the stockholders of the W. H. McElwain Company had submitted to the board the result of a detailed inventory and financial statement of the W. H. McElwain Company as of May 6, 1921, and had agreed to sell the entire outstanding capital stock of W. H. McElwain Company for the equivalent of \$9,464,837.50 on the basis therein named. The preamble recites that the officers of respondent after a careful analysis of such inventory and representation concluded that said sum represents the fair and reasonable basis of the sound values of the net assets of W. H. McElwain Company; that the assets of W. H. McElwain Company are reasonably worth the prices therein stated; that the association with W. H. McElwain Company resulting from the merger of the two companies was desirable to properly meet the demands of the growing business of the International Shoe Company. That preamble and resolution appears in the record as respondent's Exhibit 2.

PAR. 16. The contract of May 11, 1921 (respondent's Exhibit 4), provided in paragraph 10 thereof that unless the audit then being made by Chase & Company, public accountants of Boston, Massachusetts, confirmed the balance sheet of April 30, 1921 in all essen-

tial particulars, International Shoe Company might withdraw from the agreement. On May 14, 1921, International Shoe Company accepted the audit and confirmed the agreement by wire and letter, and such confirmation appears in the record as respondent's Exhibits 8 and 9.

PAR. 17. In exchange for the three classes of stock of W. H. McElwain Company, the respondent issued 52,670 shares of its preferred stock at \$109 a share, and 118,028 shares of its common stock at \$30 a share, and also paid \$181,729.20 in cash. For the three classes of stock of W. H. McElwain Company, the respondent made an expenditure of stock and cash amounting to \$9,463,599.20, and by that transaction respondent acquired directly all the three classes of stock or share capital of W. H. McElwain Company except about 50 shares of first preferred stock and 35 shares of common stock.

PAR. 18. Almost immediately after the respondent accepted the audit of Chase & Company, the W. H. McElwain Company and respondent inserted a page advertisement in the issue of the New York World of Friday, May 20, 1921. The heading of that advertisement is: "Announcing the Creation of the Largest Shoe Company in the World." That advertisement appears in the record as Commission's Exhibit 2, and among the statements therein are the following:

The International Shoe Company of St. Louis and the W. H. McElwain Company of Boston have merged.

It brings together a combined manufacturing capacity larger than that of any other maker of shoes in the United States or Abroad.

In 1920 the International Shoe Company made more pairs of men's, women's, and children's shoes than any other manufacturer in the World—bearing the widely known marks of their distributing companies: Roberts, Johnson and Rand, Peters Shoe Company, Friedman-Shelby Company.

In the same year the W. H. McElwain Company made more pairs of men's and boys' street and dress welt shoes than any other manufacturer in the World. McElwain shoes are widely and favorably known under the guarantee of their trade mark—McELWAIN.

The combined volume of these two companies in 1920 was \$128,000,000. So this merger creates the largest agency for the manufacture and distribution of shoes in the World.

Both companies enjoy the advantages of immense purchasing power, both control their own tanneries, both have worked with highly skilled labor, highly compensated, and yet—through the tremendous economies of vast production—have been able consistently to improve the quality of their product without increasing the profit per pair.

The International Shoe Company has 32 factories in Illinois, Missouri, and Kentucky. The affiliated tanneries of Kistler, Lesh and Co. in Pennsylvania and North Carolina supply its sole leather. Through its three great distributors its shoes are sold everywhere, predominately in the agricultural territories of the West and the South.

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McElwain shoes are made in New Hampshire, and in 10 McElwain factories, of leather tanned in two McElwain tanneries. Four McElwain factories supply other materials. McElwain leather is bought at the very source of the world's supply. McElwain shoes are sold from the Atlantic to the Pacific—particularly in the large cities and great industrial centers.

* * * * *

Why these Two Successful Enterprises Merge.

In their swift rise to the top of the shoe industry, the two companies have followed parallel lines of reasoning; to each in his field this idea has brought success;

* * * * *

Both companies have met common problems. Their paths have seldom crossed, for the companies have not been largely competitive. They were fellow travellers who saw that the strength of both companies could be brought together to carry both more rapidly to their goal—to the utmost elimination of waste in making better shoes and distributing them to the men, women and children of the country.

PAR. 19. On May 24, 1921, W. H. McElwain Company issued a circular letter to its first preferred stockholders explaining the offer of the respondent for the purchase of the stock of W. H. McElwain Company. A copy of that letter appears in the record as Commission's Exhibit 1, and contains the following statement:

We have had friendly relations with the International Shoe Company for years. We have the highest opinion of the ability and high character of the management of that company. Their business has been predominately in the West and South; ours predominately in the East. They have sought primarily to distribute their products in the great agricultural and mining districts of the country; we enjoy a large business from retailers in large cities. Separately there has been little conflict in our respective fields of activity; we compete only on the fringe. The amalgamation of the interests of the two companies, therefore, brings immediately to the new organization a nation-wide and well balanced distribution of its products. Both companies have followed similar ideals of large scale production, continuous operation of plants in a seasonal industry, and low cost distribution; in short, both have attempted to place in the hands of the American people a well made product at the lowest possible cost.

The International Shoe Company have not been willing to make an offer to purchase outright the assets of our company, but they have said that if they could maintain the continuity and the good-will and the management of our company, which they felt could be assured only by the purchase of each of our three classes of stock, they would be willing to do so, but upon no other basis would they consider an amalgamation of the interests of the two companies.

PAR. 20. By the acquisition of the stock or share capital of W. H. McElwain Company the respondent gained control of the largest manufacturer of street and dress welt shoes for men and boys, and eliminated from the field of competition respondent's largest competitor in the sale of men's dress shoes, and secured immediate

entrance into the sales territory of the New England States, and accomplished a nation-wide distribution of its products.

PAR. 21. On June 16, 1921, more than a month after the acquisition of the stock or share capital of the W. H. McElwain Company, the respondent issued a circular letter to its stockholders and advised them of the acquisition of W. H. McElwain Company and another company. A copy of that letter appears in the record as respondent's Exhibit 26, and contains the following statement regarding the profits from the acquisitions:

We paid for nothing except the actual, tangible values of the two companies—nothing was paid for good-will—and there has been secured to the International Shoe Company a book profit of about \$1,000,000.00 based on true values of the purchased properties as evidenced by the inventories and the appraisals submitted to us when the purchases were made.

PAR. 22. On July 12, 1921, Frank C. Rand, president of respondent, wrote Stanley King of W. H. McElwain Company and directed that the McElwain stock purchased by respondent should still stand in the name of members of the McElwain Company's board, and that stock exchanged by other stockholders should be reissued either to Stanley King or Stanley King and C. J. Prescott, and that after such transfer the new certificates should be endorsed in blank and forwarded to respondent. Immediately after the purchase by respondent of the stock or share capital of W. H. McElwain Company all competition between respondent and W. H. McElwain Company in the sale of shoes in interstate commerce wholly ceased. After respondent acquired the stock or share capital of W. H. McElwain Company, respondent sold three of the McElwain branches or sales houses located respectively at Boston, New York, and Kansas City, and closed down and discontinued entirely the branches or sales houses at Columbus, Ohio, Chicago, Ill., and San Francisco, Calif., and W. H. McElwain Company became a branch of the International Shoe Company. Frank C. Rand, president of respondent, was elected president of W. H. McElwain Company at the annual meeting in January 1922, and continued as such president until after the complaint was issued in this proceeding.

PAR. 23. The effect of the acquisition by International Shoe Company of the stock or share capital of W. H. McElwain Company was:

- (a) To substantially lessen competition in commerce between International Shoe Company and W. H. McElwain Company in the sale of dress shoes for men.

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(b) To restrain commerce in the shoe business and especially in that part of such business relating to the sale of dress shoes for men in various sections or communities of the United States in which International Shoe Company and W. H. McElwain Company were engaged in commerce.

(c) To restrain commerce in the shoe business in sections or communities of the United States including Columbus, Ohio; Kansas City, Mo.; and San Francisco, Calif., and in other sections or communities adjacent thereto.

PAR. 24. Respondent's Exhibit No. 1 is the consolidated balance sheet of W. H. McElwain Company as of April 30, 1921. That balance sheet shows quick assets of more than \$21,000,000, and the plant and other assets made total assets of \$27,100,437. The debts of W. H. McElwain Company on that date consisted of notes and accounts amounting to \$17,177,349.25. The property of W. H. McElwain Company at the value shown in the balance sheet of April 30, 1921, exceeded its debts approximately \$10,000,000. Respondent's Exhibit No. 32 is the consolidated balance sheet of W. H. McElwain Company as of May 31, 1921, and was made subsequent to the acquisition of the stock or share capital of W. H. McElwain Company by respondent. That balance sheet shows assets of \$24,591,664.72, and debts amounting to \$15,880,901.42. The property of W. H. McElwain Company at the value stated in the consolidated balance sheet of May 31, 1921, exceeded its debts by \$8,710,763.30. Respondent's Exhibit No. 33 is the balance sheet of W. H. McElwain Company as of November 30, 1921, more than six months after the acquisition by the respondent of the stock or share capital of W. H. McElwain Company. The assets of W. H. McElwain Company as of November 30, 1921 amounted to \$17,691,317.78 while the debts amounted to \$13,701,494.37. The property of W. H. McElwain Company as of November 30, 1921, exceeded its debts by \$3,989,823.41. At and prior to the acquisition by respondent of the stock or share capital of W. H. McElwain Company the aggregate of the property of W. H. McElwain Company, at a fair valuation, was more than sufficient in amount to pay its debts. W. H. McElwain Company was not insolvent prior to the acquisition of its stock or share capital by the respondent, nor subsequent thereto.

PAR. 25. The complaint in this proceeding was issued on May 18, 1923, and duly served on the respondent, and charged that respondent had acquired the stock or share capital of W. H. McElwain Company in violation of Section 7 of the Clayton Act. Thereafter, on July 5, 1923, respondent filed its answer to such complaint, and specifically admitted certain allegations in the complaint, and denied

other allegations therein. In addition to such admissions and denials, respondent's answer contains the following averments:

Fourth: And further answering respondent would respectfully show the Commission that upon receipt of the complaint, and upon being advised that there was a possible technical violation of Section 7 of the Clayton Act, in its acquisition and ownership of the share capital of W. H. McElwain Company, this respondent took the necessary steps to remedy any such technical violation; that it has divested itself of any and all stock or share capital of W. H. McElwain Company; that it does not now own, or control any stock or share capital of said W. H. McElwain Company; and that no officer, director or stockholder of respondent owns or controls any stock or share capital of said W. H. McElwain Company. Therefore, the premises considered, this respondent respectfully asks that this complaint be dismissed.

INTERNATIONAL SHOE COMPANY,
By F. C. RAND, *President*.

PAR. 26. Subsequent to the filing and service of the complaint in this proceeding, respondent adopted a program for the discontinuance of W. H. McElwain Company as a going concern and the acquisition of its assets by respondent. The program was to sell the capital stock of W. H. McElwain Company and purchase its assets. Late in May or early in June, 1923, F. C. Rand, president of respondent company, resigned and the directors and officers were replaced by other directors and officers holding qualifying shares of stock owned by respondent. Clifford P. Warren succeeded Rand as president; Edward L. Prescott succeeded Stanley King as vice president and Miss C. S. Howland succeeded him as treasurer. Miss Howland was secretary to Clifford P. Warren. King was at that time, and still is, eastern representative of respondent in Boston, in immediate charge of the plants and business of its McElwain branch. May 18, 1923, President Rand, of respondent corporation, instructed Stanley King, to see the chairman of the Federal Trade Commission regarding rumored action against the company for the purchase of the W. H. McElwain Company's stock. King carried out the instructions, and subsequently went to St. Louis to report to Rand. A conference, including King, Jackson Johnson, president of the board, Rand president of respondent, and R. E. Blake, attorney for respondent, was held to determine on a course of action. As a result of such conference King was authorized to arrange for a disposal of the stock of the McElwain Company and the acquisition of its entire assets, tangible and intangible, by respondent. King first negotiated with New York bankers, Burr & Co., for the sale of the stock, but Burr demanded the written agreement of respondent to buy back the assets after the bankers had bought the stock. Negotia-

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tions with Burr & Company were dropped, and King proceeded to Boston.

PAR. 27. As a result of a further conference at St. Louis between Rand, Johnson and Blake, Blake was instructed to proceed to Boston and arrange for the dissolution of W. H. McElwain Company and the taking over of its properties and assets by respondent. Under date of June 4, 1923, respondent made alternative offers in writing to W. H. McElwain Company for the purchase of W. H. McElwain Company's properties and assets, beginning such offer with the following sentence:

We offer to buy from you all your properties and assets, real, personal and mixed, tangible and intangible, of any and all descriptions, whether carried on your books as valuable assets or otherwise, upon the basis outlined herein-after. This offer to buy shall be open for your acceptance until 12 o'clock noon, Eastern time, on Wednesday, June 13, 1923.

Respondent offered to pay \$4,063,125.89 for such assets of W. H. McElwain Company and assume and liquidate all liabilities of W. H. McElwain Company, or pay \$16,537,821.91 for such assets on condition that W. H. McElwain Company liquidate all its liabilities in its own way without cost to respondent. It was declared, in such offers, that the sums offered were arrived at in each instance "by taking the total net value of your properties and assets as shown by your books and by an audit thereof made by Marwick, Mitchell & Company as of April 30, 1923, and adding thereto the sum of \$1,500,000." On June 12, 1923, respondent's board of directors authorized Rand and Sudholt, president and secretary and treasurer, respectively, of respondent to contract for the purchase of the assets and properties of W. H. McElwain Company. On the same date the time for acceptance of the offers was extended to June 20, 1923. The offers herein set forth were the second offers of respondent, and succeeded like offers made a few days previously for \$1,000,000 less. At the time that the above offers and authorization were made, W. H. McElwain Company's officers and directors were such by virtue of holding for respondent stock owned and controlled by respondent.

PAR. 28. It was explained by President Rand that the increase of a million dollars in the offers was to put the offers beyond criticism of certain minority stockholders who threatened trouble, and as the respondent would get back in stock liquidation the extra amount paid for assets, it made no substantial pecuniary difference to respondent. Through Charles J. Prescott, formerly vice president of W. H. McElwain Company and an associate of Stanley King, King was placed in touch with Pierre E. Bonin, vice president of Bennett, Ltd., of

Chambly, Province of Quebec, Canada. Between June 8 and 15, 1923, King and Bonin entered into an agreement that Bennett, Ltd., would purchase 69,946 shares of the first preferred stock and 491 shares of the common stock of W. H. McElwain Company, and that respondent would surrender to Bennett, Ltd., for cancellation all its remaining holdings of second preferred and common stock of W. H. McElwain Company, and would acquire from stockholders and turn over to Bennett, Ltd., 50 shares of common stock of W. H. McElwain Company not then held by respondent. The portion of the agreement dealing with the sale of first preferred and common stock to Bennett, Ltd., was reduced to writing and executed by King for respondent and by Bonin for Bennett, Ltd., on June 15, 1923. The portion of the agreement dealing with the surrender of other stock for cancellation and of securing and surrendering to Bennett, Ltd., of the additional 50 shares of stock remained an oral agreement. The 50 shares of common stock were later acquired and turned over to Bennett, Ltd.

PAR. 29. Upon signing the agreement with Bennett, Ltd., June 15, 1923, King authorized Old Colony Trust Company, of Boston, transfer agent of the W. H. McElwain Company stock, to transfer such stock to Bennett, Ltd. At the time respondent sold the stock of W. H. McElwain Company to Bennett, Ltd., for \$4,061,094.14 respondent had invested in W. H. McElwain Company stock as purchase price \$9,470,832.50, and had advanced to that company about \$12,000,000, so that respondent's total investment in McElwain Company was about \$21,500,000. Through this investment respondent had acquired access to the New England territory and to customers for men's and boys' dress shoes in large cities and had removed from the field of competition the largest maker of such shoes. At the time that Bennett, Ltd., agreed to pay respondent \$4,061,094.14 for the capital stock of the McElwain Company, Bennett, Ltd., had been informed that the liabilities of W. H. McElwain Company were about \$12,000,000, and its gross assets about \$14,500,000, and that its net assets were worth only about \$2,500,000, and that the price Bennett, Ltd., offered for the stock was about \$1,500,000 in excess of the net value of the assets of the company. Bennett, Ltd., was not a shoe manufacturer nor a shoe merchant, and had no experience in the operation of shoe-making plants. No payment was made by Bennett, Ltd., for or on account of the stock at the time the agreement was signed and the stock ordered transferred to it.

PAR. 30. A special meeting of stockholders of the W. H. McElwain Company was held at Boston, Mass., June 20, 1923. Bennett, Ltd., appeared by its proxy, Pierre Bonin, representing 69,946 shares

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of first preferred stock. J. Franklin McElwain and Stanley King, joint tenants, were represented by their proxy, Stanley King. Clifford P. Warren, Edward L. Prescott, Charles J. Prescott, and Frederick B. Smith were present in person. Messrs. Warren, Prescott, and Smith, and Miss Howland, held shares of stock belonging to respondent. Acts of the board of directors since January 25, 1923, were approved. By resolution the capital stock was reduced by retirement, cancellation and extinguishment of the following items in the treasury; 1,419 shares of first preferred stock of the par value of \$100 each; 2,000 shares of second preferred stock of the par value of \$50 each; 104 shares of common stock of the par value of \$50 each. The capital stock was further reduced by cancellation and extinguishment of 52,000 shares of second preferred stock, par value \$50 each, and 69,346 shares of common stock of the par value of \$50 each, which was submitted or surrendered by respondent for such cancellation. The meeting adjourned for 15 minutes in order to file at the State House with the secretary of the Commonwealth of Massachusetts, an amendment to the articles of incorporation providing for the reduction in capital stock. On reassembling, the alternative offers of respondent for the assets of the W. H. McElwain Company were submitted, and the stockholders accepted the offer of \$4,063,125.89 for the purchase of all "the property and assets of W. H. McElwain Company of any and all descriptions." It was a condition of this purchase that respondent should assume and liquidate the liabilities of the W. H. McElwain Company. It was also provided that W. H. McElwain Company agree to sell for the sum of one dollar at any time that W. H. McElwain Company may be dissolved or as soon thereafter as is lawful, the sole right to the use of the name W. H. McElwain Company. The board of directors were at the same time authorized and instructed "that when the company shall have conveyed all the property and assets in accordance with the offer of International Shoe Company and the acceptance thereof at this meeting, to distribute the purchase price among the stockholders of the company as a distribution of capital in liquidation of the company at such time or times and in such amounts as the board shall determine, but in accordance with the requirements of the articles of organization and by-laws of the company." The board of directors were authorized to liquidate and dissolve the company, including, if the board shall so determine, proceedings for its dissolution under the general laws of Massachusetts. The meeting then adjourned until Wednesday, June 27, 1923. No further meeting is disclosed by the record.

PAR. 31. The board of directors of W. H. McElwain Company met at Boston, Mass., Wednesday, June 20, 1923, in special session,

with Clifford P. Warren, chairman of the board, presiding, and Miss C. S. Howland, secretary of the company, keeping minutes. Charles J. Prescott was elected to fill a vacancy upon the board. A resolution was adopted authorizing and instructing Clifford P. Warren, president, to carry out the terms of the offer and acceptance as to the purchase and sale of the assets and properties of W. H. McElwain Company to respondent, and to execute such conveyances, contracts and other instruments as to him shall seem necessary or desirable in connection therewith. The president was also authorized and instructed to execute an agreement or conveyance in writing, dated June 20, 1923, which was presented to the meeting, such agreement being between W. H. McElwain Company and International Shoe Company, and also to execute deeds and conveyances covering specific property listed in the resolution. Warren was also instructed, as president, after he had received the purchase price for the properties and assets of the company, to pay to the stockholders \$58.060414 for each share of the first preferred stock held by them, "upon receipt from each such stockholder of such receipt or a release as shall seem to said Clifford P. Warren sufficient and satisfactory, the said payment being in distribution of capital in liquidation of the company." The action of Warren in opening, on June 16, 1923, an account for W. H. McElwain Company in the National Bank of Commerce in New York, was ratified and approved, and it was provided that either Warren, president, or C. S. Howland, treasurer, might sign checks upon that account. Documents had already been prepared in the form of deeds and memoranda of agreements, and these documents were executed upon June 20 or the next day, and the purchase by respondent of the assets of W. H. McElwain Company was thus consummated.

PAR. 32. On June 21, 1923, Clifford P. Warren, president of the W. H. McElwain Company, Stanley King, R. E. Blake, attorney representing respondent, and Pierre E. Bonin, representing Bennett, Ltd., met in the National Bank of Commerce of New York City. King, by direction of respondent, had arranged for an additional credit with the bank of \$4,000,000 and secured it, June 21, 1923, by depositing a day note, or clearance note, signed by officers of respondent and sent to King, June 18, 1923, from St. Louis. King filled in the date "June 21, 1923." King had also in his possession a check drawn in favor of the International Shoe Company by Bennett, Ltd., for \$4,061,093.72, the agreed purchase price of the stock of W. H. McElwain Company bought by Bennett, Ltd. This check King had held by agreement with Bennett, Ltd., without presenting it for payment until this date. When such check was issued Bennett, Ltd., did not have funds to its credit to pay the check. Respondent

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had also sent to King, on June 18, 1923, by mail, a check on the National Bank of Commerce for \$4,063,125.89, drawn to the order of W. H. McElwain Company, as payment for W. H. McElwain Company's assets and properties. This check King handed to Clifford P. Warren, president of W. H. McElwain Company, at the bank, or on the day before in Boston. Pierre E. Bonin, vice president of Bennett, Ltd., was handed by Warren, a check drawn on the National Bank of Commerce by W. H. McElwain Company for \$4,061,093.72, the exact amount which Bennett, Ltd., had agreed to pay respondent for W. H. McElwain Company stock. Warren, as hereinabove stated, had opened an account for W. H. McElwain Company in this bank, on June 16, 1923, by a deposit of \$1,000. Bennett, Ltd., had a small account in the bank at that time. The check given Bonin by Warren represented the liquidation value of the stock of W. H. McElwain Company which Bennett, Ltd., had agreed to purchase. King deposited with the bank respondent's day note or clearance note, thus adding \$4,000,000 to respondent's credits in the National Bank of Commerce of New York. Warren, as president of W. H. McElwain Company, endorsed the check drawn by respondent upon this bank, and given to McElwain Company for its assets and properties, and King immediately deposited such check to the credit of W. H. McElwain Company, thus transferring \$4,063,125.89 from respondent's account to the credit of W. H. McElwain Company. At the same time, Bonin endorsed the check for \$4,061,093.72 drawn in favor of the Bennett, Ltd., by W. H. McElwain Company upon the same bank, and representing the liquidation value of the stock of W. H. McElwain Company which Bennett, Ltd., had agreed to purchase from respondent. King immediately deposited that check in the National Bank of Commerce of New York to the credit of Bennett, Ltd., thus transferring a credit of \$4,061,093.72 from W. H. McElwain Company's account to Bennett, Ltd. King then endorsed the check drawn in favor of respondent by Bennett, Ltd., upon this same bank for the agreed price of the stock of W. H. McElwain Company which Bennett, Ltd., had undertaken to purchase from respondent, and King deposited the check to the credit of respondent, thus transferring to respondent the credit of \$4,061,093.72 which Bennett, Ltd., had just obtained from the W. H. McElwain Company's check. The National Bank of Commerce then charged \$4,000,000 against respondent's account and took up and marked paid the day note or clearance note which King had deposited earlier in the day to the credit of respondent as the basis for an additional credit of \$4,000,000, and the transaction was closed. The whole transaction as detailed in these find-

ings was a transfer of the assets and properties of W. H. McElwain Company by and to the respondent, and was accomplished by the circuitous methods described. It does not appear that Bennett, Ltd., had at any time any substantial interest in such transaction, but was lending itself to such transaction as a vehicle to accomplish the transfer.

PAR. 33. Bennett, Ltd., is a Canadian corporation. It has no office in the United States, had none at the time this transaction occurred so far as King knew. The address of Bonin is Chambly, Province of Quebec, Canada, and King has not seen Bonin in the United States since June 21, 1923. The account of Bennett, Ltd., with the National Bank of Commerce in New York was small. A copy of that account for the entire month of June, 1923, is shown in the record as Commission's Exhibit No. 23. The balance to the credit of Bennett, Ltd., on May 31, 1923, was \$639.45, and the balance to the credit of Bennett, Ltd., on June 30, 1923, was \$2,623.13. The sum to the credit of Bennett, Ltd., in the National Bank of Commerce in New York during the month of June, 1923, never amounted to more than a few thousand dollars, except on June 21, 1923, when the sum of \$4,061,093.72 was credited to the account of Bennett, Ltd. A like sum was charged against the account of Bennett, Ltd., on the same day.

PAR. 34. The transactions between the respondent and Bennett, Ltd., were not bona fide, and the respondent did not in good faith divest itself of the stock or share capital of W. H. McElwain Company. The respondent did not take the necessary steps to remedy the violation of Section 7 of the Clayton Act, as it alleged in the fourth paragraph of its answer, and it has not remedied such violations. The acquisition by the respondent of the stock or share capital of W. H. McElwain Company was in violation of Section 7 of an Act of Congress approved October 15, 1914 (the Clayton Act). The transfer to the respondent of the assets, properties, rights and privileges of W. H. McElwain Company was a mere artifice and subterfuge to evade said Act of Congress, and to escape the penalties thereof. By such acquisition, artifice and subterfuge the respondent secured, and retains, and enjoys, the fruits, benefits, and advantages of an illegal acquisition of stock or share capital of a competing corporation engaged in commerce, viz, the W. H. McElwain Company. W. H. McElwain Company has not been dissolved and is still in existence as a corporation.

CONCLUSION.

The acquisition by the respondent of the stock or share capital of W. H. McElwain Company, as stated in the foregoing findings as

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to the facts, constituted a violation of an Act of Congress approved October 15, 1914, entitled, "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes," and especially of Section 7 thereof.¹

ORDER TO CEASE AND DESIST.

This proceeding was regularly heard by the Federal Trade Commission on a complaint duly issued and served on International Shoe Company, the answer of the respondent thereto, the testimony and evidence on file, and the brief and arguments of counsel. Thereupon the Federal Trade Commission made a report in writing in which it stated its findings as to the facts with its conclusion that International Shoe Company is and has been violating the provisions of an Act of Congress approved October 15, 1914, entitled, "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes," and especially Section 7 thereof.

It is therefore ordered, That International Shoe Company:

1. Divest itself of all stock or shares capital of W. H. McElwain Company, a corporation, which it may now hold or own, directly or indirectly, together with all right, title, interest and claim in and to such stock or share capital, substantially all the stock or share capital of W. H. McElwain Company being found and declared to have been acquired and to have been held, owned, and used by International Shoe Company in violation of Section 7 of said Act of Congress.

2. Cease and desist from the ownership, operation, management and control of the assets, properties, rights, and privileges acquired by it from W. H. McElwain Company subsequent to the acquisition by it of the stock or share capital of W. H. McElwain Company, together with all improvements and additions thereto, which assets, properties, rights and privileges are found and declared to have been acquired and to be now held by International Shoe Company as the result of the acquisition by International Shoe Company of the stock or share capital of W. H. McElwain Company in violation of Section 7 of said Act of Congress.

3. Divest itself of all assets, properties, rights and privileges acquired by it from W. H. McElwain Company subsequent to the acquisition by it of the stock or share capital of W. H. McElwain Company, together with all improvements and additions thereto,

¹ Commissioners Nugent and Thompson dissent to the omission from paragraph 20 of the foregoing findings of the words "the effect of such acquisition by respondent of such stock or share capital tended to create in the respondent a monopoly in commerce in the shoe business," and to the omission from paragraph 23 of the words "to tend to create in International Shoe Company a monopoly in commerce of the shoe business" as subparagraph (d) thereof.

which assets, properties, rights and privileges are found and declared to have been acquired and to be now held by International Shoe Company as the result of the acquisition by International Shoe Company of the stock or share capital of W. H. McElwain Company in violation of Section 7 of said Act of Congress.

4. Submit, within sixty days from the date of this order, for the consideration and approval of the Federal Trade Commission, a plan for the performance of this order in a manner which shall restore in harmony with the law the competitive conditions which existed with respect to the respondent and such assets, properties, rights, and privileges prior to the acquisition by International Shoe Company of the stock or share capital of W. H. McElwain Company.

Dissent by Commissioner Humphrey.

In this case the evidence shows the following facts:

1. That the respondent acquired the stock of the McElwain Company.

2. That the respondent and the McElwain Company, at the time, were in competition. Whether such competition was material is a matter of opinion.

3. That the McElwain Company initiated the transaction.

4. That at the time of the transaction, the McElwain Company was in a failing financial condition, or at least its officers believed that it was, and they believed that its bankruptcy was probable.

5. That the respondent at the time had taken more orders than it was able to fill, at its then capacity, and was considerably troubled with these excess orders, and was very desirous, for this reason, of increasing production.

6. That it used the organization and assets acquired from the McElwain Company in increasing its output largely for the purpose of filling these excess orders.

7. That the respondent did not increase prices; on the contrary, in some instances, it voluntarily decreased prices.

8. That it made better shoes, and sold them for the same or less money than the McElwain Company was selling the same class of shoes at the time the respondent acquired its stock.

9. That the respondent did not use the stock so acquired by voting or otherwise to bring about, or attempting to bring about the substantial lessening of competition.

10. That the public was in no degree, in any way, injured by the transaction. On the contrary, the evidence shows that the public was benefited thereby.

Dissent.

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QUESTIONS OF LAW.

Admitting, but not asserting, that there was substantial competition between the respondent and the McElwain Company at the time of the transaction complained of, it was probable that this competition was going to be destroyed by the failure of the McElwain Company. This circumstance removed the very evil that the statute was intended to prevent. This being true, the transaction was not unlawful. (*American Press Association v. United States*, 245 Fed. 91.)

It seems to me that this case comes squarely within the exception of paragraph 1 of section 7 of the Clayton Act, as modified by paragraph 3 of said section.

Was the public injured by this transaction? Contrary to the majority, I think that this is the vital, and should be the determining question in this case.

The evidence does not show or tend to show that prices were increased by this transaction. In fact, the evidence tends to show that prices were reduced. The evidence also tends to show that the public was furnished with a better grade of shoes for the same or less money. Because of this transaction, no one has had to pay a cent more for a pair of shoes and no one has been caused to buy a pair of shoes of inferior quality.

The extent of the respondent's sinning, in so far as the evidence shows, was that it bought the stock of a competitor at the instance of that competitor, to save such competitor from bankruptcy, and to acquire additional facilities which it badly needed to fill orders that it had already taken.

There is no evidence showing that this stock was bought for other than investment purposes, nor is there evidence showing that such stock has been used in any manner to substantially lessen competition.

Had the respondent been content to wait, if we are to be guided by the evidence, then in a short time its competitor would have been bankrupt. The stockholders would have lost their entire investments. A great organization would have been destroyed and the competition with which the respondent is charged with destroying would have been wiped out without cost to the respondent of a dollar.

In this case, the Commission has given warning to the business world that no one must answer the cry of distress. If they do, and save a vessel from complete wreck, no matter what the effect may be upon the public, they will be condemned and must suffer the penalty.

But it will be perfectly proper and commendable to stand by until the vessel sinks, and its competition with them is thereby entirely destroyed, and they pick up whatever flotsam and jetsam they may, but under no circumstances must the vessel be saved, however much it may be to the public interest. I think such policy must inevitably injure the public and be immeasurably detrimental to our industries.

I can not be oblivious to the fact that by the issuance of this order, many innocent investors will be injured and that no one will be benefited.

The position of the majority in this case, if I correctly understand the facts, is that if one corporation acquired all of the stock of another competitive corporation, such acquisition is in violation of the Clayton Act, regardless of the purpose, effect and result of the acquiring of such stock, and that the Commission must issue an order under such circumstances, against the offending corporation, the Commission having no discretion to do otherwise.

To this opinion I can not subscribe. It is true that the phrase "in the interest of the public" is not written in the Clayton Act, as it is in the Federal Trade Commission Act, in words, but in my judgment it is there by implication as plainly as if it were written in letters.

To issue this order will in all probability cause innocent stockholders to lose several million dollars. It will do no good to anyone. I can not bring myself to believe that it is the duty of the Commission to issue an order where no good will result and evil must follow.

I, therefore, find myself compelled to dissent from the opinion of the majority.

Commissioner Hunt concurs.